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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

10700 RANGELINE ROAD, LLC.,

Plaintiff and Respondent,

v.

LEATRACE F. BAPTISTE AND ADA M.  
BRADFORD,

Defendants and Appellants.

B207553

(Los Angeles County  
Super. Ct. No. MC017048)

APPEAL from orders of the Superior Court of the County of Los Angeles, Alan S. Rosenfield, Judge. Affirmed.

Benjamin Kiss for Plaintiff and Respondent.

Benjamin Robinson for Defendants and Appellants.

## **INTRODUCTION**

Defendants and appellants Leatrice F. Baptiste and Ada M. Bradford (defendants) appeal from orders denying motions to set aside defaults and denying reconsideration of those previous orders. We affirm.

## **BACKGROUND**

Plaintiff 10700 Rangeline Road, LLC. (plaintiff) filed an action against defendants and others, inter alia, for specific performance in connection with the alleged agreements to sell to plaintiff interests in vacant land in Lancaster, California. In October, 2006 through January 2007, the trial court rejected several requests for defaults against the defendants because of various defects in the submissions. On January 12, 2007, plaintiff against requested defaults against defendants, and they were entered on January 22, 2007.

On January 24, 2007, after a default prove-up hearing, the trial court entered a judgment against defendants for specific performance. On August 1, 2007, defendants moved to set aside the defaults.<sup>1</sup> Defendants denied that there had been service upon them of the summons and complaint or of the notices of the default prove-up hearing. Plaintiff opposed the motions on the grounds that proper service had been made and that defendants had not been diligent in their requests for relief. Defendants made no appearance at the hearing on the motions. There is no transcript of the proceeding at that hearing in the record; nor is there a minute order in connection with a ruling. Apparently, the motions were denied on January 8, 2008, although there is no order of such denials in the record. The record includes plaintiff's notice of ruling of denial of the motions and a proof of service of that notice.

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<sup>1</sup> Not default judgments.

On January 18, 2008, defendants moved for reconsideration of the denial of the motions to set aside default, on the ground that there was justification—illness and mistake—for counsel’s absence from the hearing on the motions to set aside the defaults. At the hearing on the motions for reconsideration, the trial court asserted that the denial of the motions to set aside the defaults “was based on the merits, not because the defendants’ attorney failed to appear.” The trial court denied the motions for reconsideration because the requirements of Code of Civil Procedure section 1008 had not been met. Defendants filed a timely notice of appeal. This court invited the parties to address the adequacy of the record and whether there is jurisdiction to consider the motions for reconsideration after entry of judgment.

## **DISCUSSION**

Defendants first argue that the trial court abused its discretion by denying the motions to set aside the defaults. Defendants failed to provide an adequate record with respect to the hearing on the motions. There is no reporter’s transcript of the proceeding or an agreed on settled statement. Even though defendants’ counsel did not appear, the trial court said it considered the matter on the merits. Without a record of the hearing, we cannot determine the trial court’s reasoning and findings. It is the appellant’s burden to provide an adequate record on appeal. To the extent the record is inadequate, we make all reasonable inferences in favor of the judgment. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) Defendants’ position before the trial court was that service was not effected. But plaintiff contradicted this position. Defendants have not shown that the trial court abused its discretion in not setting aside or vacating the defaults. (*Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1318-1319 [abuse of discretion standard of review].) Accordingly, we affirm the order denying the motions to set aside the defaults.

Defendants also appeal from the denial of reconsideration of the orders denying the motions to set aside the defaults. The trial court denied the reconsideration because there was no showing of any “new or different facts, circumstances or law.” (Code of

Civ. Proc., § 1008, subd. (a).) Again, because we do not know the basis of the court's rulings on the motions to set aside defaults, the record is similarly inadequate for the motions for reconsideration.

Defendants rely upon *Mink v. Superior Court* (1992) 2 Cal.App.4th 1338. In that case, the trial court denied a motion for reconsideration when all parties believed the plaintiffs' claims were barred by the statute of limitations, but plaintiffs discovered after the ruling that the statute had not run because of an intervening weekend and court holiday. The court held that failure to discover the mistake of fact before the ruling on summary adjudication excusable. Thus, plaintiffs were entitled to relief under either Code of Civil Procedure section 1008 or Code of Civil Procedure section 473.

Here there was no mistake of fact. The record does not show that defendants provided new evidence with regard to the motions to set aside the defaults. The only ground defendants assert is counsel's failure to appear at the hearing, and the trial court asserted that was not the basis for denying the motions to set aside the defaults. Moreover, as the motions were to set aside defaults and not default judgments, the trial court lacked jurisdiction to grant reconsideration after a judgment was entered. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859, fn. 29; *APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 180-181.)

## **DISPOSITION**

The orders and judgment are affirmed. Plaintiff is awarded its costs.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.